

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARIA HINOJOS

Claimant

VS.

CARGILL MEAT SOLUTIONS

Self-Insured Respondent

Docket No. 1,031,245

ORDER

Claimant requests review of the October 13, 2008 Order entered by Administrative Law Judge Pamela J. Fuller.

ISSUES

The Administrative Law Judge (ALJ) denied the claimant's request for penalties and attorneys fees pursuant to K.S.A. 44-512a based upon respondent's failure to pay certain outstanding medical bills. The ALJ concluded the medical bills at issue were unauthorized and thus not due and payable. She also specifically denied claimant's request for attorney's fees based upon K.S.A. 44-536(b),(c) and (f).

The claimant requests review of this decision and frames her issues as follows:

1. Whether the ALJ erred in denying payment of penalties for failure to pay medical compensation in the amount of \$18,511 when the court's order states that temporary total disability should be paid from August 14, 2006 the same date claimant incurred medical expenses.
2. Whether the ALJ erred by stating that the medical treatment was not authorized when respondent denied compensability of claimant's claim and the Appeals Board found the claimant has provided notice pursuant to the statute.
3. Whether the ALJ erred by allowing respondent to pursue a line of questioning concerning the authorization of payment of the medical

bills when respondent stated in writing denying payment of the medical bill in question because "The treatment was of personal nature and not as a result of a work related injury."¹

Claimant requests that the Board reverse the ALJ's Order, grant penalties and remand this appeal for calculation of attorney fees for additional work on this appeal.²

Respondent requests that the ALJ's Order be affirmed. Respondent denies responsibility for the outstanding medical bills as the medical treatment was not authorized as required by the Act. Respondent also asks the Board to reconsider its earlier decision on the issue of notice in light of the testimony of Doris Helean.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the undersigned Board Member makes the following findings of fact and conclusions of law:

This claim has been before the Board before on the issue of underlying compensability. Specifically respondent denied the claim based upon lack of timely notice. This argument came about because claimant initially thought her back complaints were attributable to a kidney condition. But later medical examinations and opinions revealed it to be a problem with her back. After a remand, a subsequent preliminary hearing and yet another appeal, the Board concluded claimant satisfied the timely notice requirements.³

The matter was yet again remanded to the ALJ for further proceedings and from there, the ALJ entered an order granting claimant temporary total disability (TTD) benefits effective August 14, 2006. Judge Fuller also ordered payment of medical treatment "until further order" or until such time as claimant reached maximum medical improvement. Nowhere in that Order did the ALJ designate a treating physician or order respondent to pay any outstanding medical bills to Dr. Abay or any other practitioner.

Thereafter, claimant demanded payment of claimant's medical bills associated with her back surgery pursuant to K.S.A. 44-512a. The surgery and the bills associated with it and her after care were all provided before this claim was found compensable. And as noted above, nothing within the ALJ's most recent Order granted payment of any of those bills associated with Dr. Abay's care. Rather, her Order only provided for prospective treatment.

¹ Application for Review (filed Oct. 27, 2008).

² Claimant's Brief at 2 (filed Nov. 25, 2008).

³ Board Order, 2007 WL 2296145 (KW CAB July 26, 2007).

When the issue of claimant's demand for penalties came before the ALJ, she rejected claimant's request as she specifically found that the outstanding bills were unauthorized and therefore, respondent had no responsibility under the Act. She likewise denied claimant's request for attorneys fees based upon K.S.A. 44-536(b), (c) and (f).

After a review of the file, the Board finds that the ALJ's Order should be affirmed.

Distilled to its essence, claimant has demanded payment for bills that were incurred before August 14, 2007, the date the ALJ ordered respondent to begin providing medical treatment. However, at this point in the litigation, respondent is only under order to provide medical treatment beginning August 14, 2007 and continuing until one of the qualifying events, as set forth in the August 15, 2007 Order, occur. Although, in her most recent order the ALJ made a finding that Dr. Abay and his treatment were not authorized, that was not really the issue. To the contrary, the issue was whether, under K.S.A. 44-512a, respondent had failed to pay when due compensation (including medical compensation) *that had been ordered*. Here, the medical bills claimant seeks to base her claim for penalty upon had never been ordered. It may be, at some later time period, that those bills will be determined to be authorized and become the subject of an Order to pay. But until that occurs, the bills contained within the claimant's demand were not the proper subject of any statutory demand under K.S.A. 44-512a and the ALJ appropriately denied any penalty based upon that demand. For these reasons, the ALJ's Order is affirmed.

The balance of claimant's arguments, as to the proper admissibility of evidence relating to whether Dr. Abay was ever authorized to treat claimant as well as claimant's contention that a finding of compensability by the Board presupposes a finding that Dr. Abay's treatment was authorized, are not at issue. Likewise, respondent's request that the Board revisit the issue of compensability is not at issue either as that issue was not the focus of the most recent hearing.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Pamela J. Fuller dated October 13, 2008, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of January 2009.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Conn Felix Sanchez, Attorney for Claimant
D. Shane Bangerter, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge